

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

JOHN C. KITCHIN, JR., et al.,)
on behalf of themselves and all others)
similarly situated,)
)
Plaintiffs,)
)
v.)
)
BRIDGETON LANDFILL, LLC,)
et al.,)
)
Defendants;)

BRIDGETON LANDFILL, LLC,)
)
Third-Party Plaintiff,)
)
v.)
)
COTTER CORPORATION, N.S.L.,)
)
Third-Party Defendant.)

No. 4:18 CV 672 CDP

MEMORANDUM AND ORDER

This matter is before the Court on defendants Bridgeton Landfill, LLC and Republic Services, Inc.'s motion to disqualify attorney James F. Clayborne, Jr. and his law firm of Clayborne & Wagner, LLP, in their representation of plaintiffs in this action. The motion to disqualify arises from Clayborne's representation of defendants in 2013 wherein he acted as a liaison between defendants and a water treatment facility in Illinois, the Illinois Environmental Protection Agency, and the

City of Sauget, Illinois, to set up negotiations relating to defendants' desired resumption of its business relationship with the water treatment facility. The facility had earlier ceased accepting leachate discharge from the Bridgeton Landfill because of alleged excessive hazardous waste contained therein.

After the motion to disqualify was fully briefed, Clayborne and his law firm sought to file, under seal, Clayborne's supplemental declaration to further support their opposition to the motion. Defendants have not objected to the filing of this supplemental declaration or to its filing under seal. I will therefore grant leave to file the supplemental declaration and will permit its filing under seal.

Clayborne disputes defendants' assertion that his representation of them in 2013 involved a matter substantially related to this litigation. Defendants request that I review certain privileged documents *in camera* to assist in this determination. Because Clayborne appears to agree that additional information about his 2013 representation is required for me to conduct a proper analysis in determining the motion to disqualify (*see* ECF 115-1 at p. 7); and because he disputes defendants' factual averments regarding the extent of his prior representation, can neither confirm nor deny what documents he received during his prior representation, and cannot recall the extent to which he reviewed such documents, I will order defendants to submit to the Court for *in camera* review the relevant privileged documents and communications shared with Clayborne during his prior representation.

Accordingly,

IT IS HEREBY ORDERED that attorney James F. Clayborne, Jr. and Clayborne & Wagner, LLP's motion for leave to file, under seal, James F. Clayborne, Jr.s' supplemental declaration [127] is **GRANTED**.

IT IS FURTHER ORDERED that defendants Bridgeton Landfill, LLC and Republic Services, Inc.'s Motion for *In Camera* Review in Connection with Motion to Disqualify [131] is **GRANTED**.

IT IS FURTHER ORDERED that defendants Bridgeton Landfill, LLC and Republic Services, Inc., shall produce to the Court for *in camera* review the privileged documents and communications shared with attorney James F. Clayborne, Jr. during his prior representation of defendants in 2013. Copies of these documents and communications must be delivered to my chambers no later than **4:30 p.m. on Tuesday, August 30, 2022**. They shall not be filed – electronically or otherwise – in the Court file, but defendants must file a statement indicating that the documents and communications have been provided to chambers as required by this Order.



CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE

Dated this 23rd day of August, 2022.